IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01/03/2004

Coram

The Hon'ble Mr.JUSTICE K.GOVINDARAJAN
and
The Hon'ble Mr.JUSTICE N.KANNADASAN

O.S.A.No.46 of 1991
and O.S.A. Nos. 47 to 56 and 66 to 69 of 1991

O.S.A.No.46/1991

Ram Narayan Bhattad .. Appellant

-vs-

1.Tmt.Krishna Bai Jhaver
2.Harikrishna Jhaver
3.D.K.Jhaver
4.J.K.Jhaver
5.V.K.Jhaver
6.Vimala Jhaver
7.Pushpa Mundra .. Respondents

Counsel for Appellants : Mr.V.Lakshminarayanan

Counsel for Respondents: Mr.R.Krishnamurthy,
Senior Counsel, forward
Mr.V.Nataraj, for R6 & R7,
in O.S.A.No.46 to 50, 54 to 56, 68 & 69 and for R1 & R5,
in O.S.A.51 to 53, 66 & 67/91

Mr.A.L.Somayaji,
Senior counsel, for
Mrs.K.Bhanumathi, for
R1 toR5 in O.S.A.46 to 50, 54 to 56, 68&
69 & for
R2 to R4 in O.S.A.51 to53/91,66 & 67/91.

:COMMON JUDGMENT

K.GOVINDARAJAN,J.

The above Appeals are filed by the assignee-decree holder of the decree granted in C.S.No.28/1975 having aggrieved by the orders passed by the learned single Judge in various Applications. Since the issue raised in these

Appeals are very narrorw one, namely, whether the Execution Petitions filed in E.P.Nos.58, 69, 70 and 71 of 1986 by the appellant in this Court without obtaining permission to have simultaneous execution of the decree are maintainable, we are not proposed to elaborate the facts as they are not to be decided except a few facts which are necessary to decide the issue.

2. The plaintiff/Andhra Bank Ltd., filed a suit in C.S.No.28/1975 for recovery of a sum of Rs.15,58,214.79 from the defendants, after obtaining a decree on 25.4.1979, directing defendants 3 and 4 and defendants 5 to 11, from out of the assets, if any, of the deceased R.S. Jhaver, who is the original defendant, in the hands of defendants 5 to 11. The appellant got assignment of the said decree from General Electric Co. of India, as there is a provision in the decree that defendants 2 and 3 and defendants 5 to 11 shall pay to the 4th defendant, the decree amount and that the 4th defendant be entitled to execute the decree on payment of 50% of the Court Fee payable at 75% of Rs.17,50,000/-. The assignee-decree holder filed E.P.No.121/1985 before this Court and the same was transferred to Sub-Court, Poonamallee and renumbered as E.P.No.80/1985. Thereafter, the appellant filed E.P. Nos.57, 58, 69, 70and 71 of 1986. The learned Master while considering the preliminary objection raised on behalf of the respondents that simultaneous execution of the decree without obtaining permission of the Court and without notice to the judgment-debtor is not maintainable, held that the said objection raised cannot be sustained at all and the said objection cannot be raised at this stage. So, the respondents preferred Appeals in Application Nos.4701, 4715, 4705, 4710, 4717 , 4028, 4027, 4026, 4711, 4713, 4706, 4029, 4030, 4704 and 4719 of 1 990. The learned Judge in the common order impugned in the above Appeals held that the Execution Petitions pending before this Court are not maintainable as no permission was obtained for simultaneous execution of the decree in this Court as well in the Sub-Court, Poonamallee. Aggrieved against the said common order, the assignee-decree holder filed the above Appeals.
3. Learned counsel for the appellants submitted that neither under the Code of Civil Procedure nor under the Original Side Rules, the compelling decree holder has to file an Application to execute the decree obtained in the High Court.

4. Moreover, the appellant filed Execution Petitions only in the High Court and not in any other Court by seeking transfer of the decree. He refers to various provisions both in the Code of Civil Procedure and in the Original Side Rules of this Court in support of his submission.

5. Mr.R.Krishnamurthy, learned Senior Counsel appearing for the respondents submitted that since notice is not served on the respondents, in view of the order dated 18.7.2000, the Appeal has to be dismissed. On merits, learned Senior Counsel, referring to various provisions of the Code and the Original Side Rules of this Court, submitted that such permission is necessary to maintain simultaneous execution of the decree. Hence the learned Judge is correct in rejecting the Execution Petitions.

6. Mr.Somayaji, learned Senior Counsel appearing for the respective respondents reiterated the arguments advanced by Mr.Krishnamurthy, learned

Senior Counsel and he also referred to the Ground No.4 in the Memorandum of Grounds to submit that the appellant has come forward with the false case as if he sought permission of this Court for simultaneous execution of the decree.

7. The points for consideration in the above Appeals are:-
(1) Whether the simultaneous Execution Petitions are sustainable, to execute the decree obtained in C.S.No.28/1975 on the file of this Court, without obtaining permission of this Court?

(2) Whether the appeals are liable to be dismissed in view of the order dated 18.7.2000 in the Appeals?

8. First we are inclined to deal with the point No.2, first. Since the appellant has not taken steps to serve the notice on certain respondents, the appeals were posted in the list and in the order dated 1 8.7.2000, the Division Bench passed the following order:-
"As a last chance, the appellant is granted time till 24.7.2000 (inclusive of 24.7.2000). Failing to comply with the required formalities by them,the appeal will stand dismissed automatically without any further orders from this Court".
In spite of the said order, the appellant has not taken steps to serve the notice on the respondents 1 and 5 in O.S.A.Nos.51 to 53 of 1991 , respondents 6 and 7 in O.S.A.54 to 56 of 1991 and respondents 6 and 7 in O.S.A.Nos.68 and 69 of 1991. We have come to the said conclusion only because the learned counsel for the appellant is not in a position to point out from the records that they have complied with the direction to serve the notice on the above said respondents. So the appeals have to be dismissed insofar as respondents 1 and 5 in O.S.A.51 to 53 of 1991, respondents 6 and 7 in O.S .A.54 to 56 of 1991 and respondents 6 and 7 in O.S.A.68 and 69 of 1991.
9. Learned counsel for the appellants, relying on the order of the Learned Master, submitted that with respect to the maintainability of the execution petition on the basis that no prior permission was obtained was not raised earlier even before the learned Judge, who remanded the matter to the Master again, and for the first time the same has been raised and so the learned Judge is not correct in deciding the maintainability of the execution petition on the above said basis. We are not able to accept the said submission. The said issue is raised on the basis of the facts available and also it goes to the root of the matter with respect to the maintainability of the execution petition itself. Even the said objection is not raised, the learned Master should have considered the same if it is brought to his notice. Hence we reject the submission of the learned counsel in this regard.

10. Admittedly, no Application is filed seeking permission to file simultaneous Execution Petition to execute the decree obtained in C.S.No.28/1975. The Execution Petition filed originally in E.P.No.121/19 85 was sought to be transferred and as per the order of this Court, the same was transferred to sub-Court, Poonamallee and renumbered as E.P.No.80/1985. Thereafter, the appellant filed E.P.No.57, 58, 69, 7 0 and 71 of 1986 to execute the decree by attaching the immovable properties and the shares and

also to prohibit the transfer of shares. The Execution Petitions were dismissed at the instance of the respondents on the ground that no prior Applications were filed seeking permission for simultaneous execution of the decree.

11 The procedure with respect to execution is dealt with in part II of the Code of Civil Procedure. By virtue of Sec.38 of the Code, a decree may be executed either by the court which passed it or by the Court to which it is sent for execution. Sec.39 of the Code gives right to the decree-holder to get the decree transferred for the purpose of execution of another Court of competent jurisdiction. The court which passes the decree may also, on its own motion send the decree for execution to any subordinate Court of competent jurisdiction. If such a decree is transferred to another Court as contemplated under Sec.42 of the code, the Court executing such a decree transferred to it, shall have the same power in executing such a decree as if it had been passed by itself.

12. Order 21 of the Code deals with execution of the decree and orders. Order 21, Rule 5 of the Code deals with mode of transfer of a decree for execution. Order 21, Rule 10 of the Code deals with Application for execution according to which the decree-holder shall apply to the Court which passes the decree or to the transferee Court if the decree has been transferred for the purpose of execution.

13. Order 21, Rule 21 of the Code deals with simultaneous execution, which reads as follows:-
"21. Simultaneous execution:- The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor."

The above said provision is not applicable to the facts of the present case as the said provision only deals with simultaneous execution both against the person and the property. It does not deal with the execution of a decree at the same time in different courts and by filing different execution petitions in the same Court. We are now concerned with reference to the execution of a decree in different courts by filing many execution petitions more than one to execute the same decree simultaneously.
14. Since the matter arises out of the order passed by the learned Judge of this Court in exercise of the Original Civil Jurisdiction, we have to deal with the relevant provisions in the Rules of the Original Side framed by the High Court of Judicature at Madras.
15. The applicability of the Code of Civil Procedure has been restricted under Order I, Rule 3 of the Original Side Rules of this Court, which is as follows:-

"3. Except to the extent specifically provided for by these rules, the provisions of the Code shall apply to all proceedings. The rules and forms mentioned in Appendix III hereto and all previous rules and forms, and the provisions of the Code, so far as such provisions are inconsistent with these rules and forms, are hereby repealed and superseded and the following rules,

orders and forms shall stand in lieu thereof."

16. The "Execution Application" has been defined under Order I, Rule 4(4) of the Original Side Rules of this Court as it means an application to the Court for the execution of a decree or order. Order 39 of the Original Side Rules of this Court deals with the procedure for execution of decrees and orders on the Original Side where an application for execution of decrees and orders on the file of the Original Side were made. Order 39, Rule 2 of the Original Side Rules deals with the transfer of a decree on the file of the Original Side of this court to another Court for execution. Order 39, Rule 5 of the Original Side Rues indicates the power of the Courts other than the Courts to which a decree was transmitted for execution to proceed with the execution, unless the Court passes the decree otherwise orders. Order 39, Rule 6 of the Original Side Rules gives a right to execute a decree in more than one Courts, other than High Court, contemporaneously. So it is clear that under Order 39 of the Original Side Rules, no provision is contemplated or no prohibition is made to execute a decree simultaneously in the High Court and also in the mofussil Courts.

17. The above said issue as to whether a Court which has passed a decree can, despite its having transferred it for execution to another Court and not having received it back with a non-satisfaction certificate, entertain an Application for simultaneous execution, has been dealt with by the Division Bench of this court in Pedda Subba Rao v. Ankamma 1932 (63) M.L.J. 788, Mahadum Beg Sahib vs. Md. Meera Sahib, AIR 1928 Mad. 493 and in Rama Reddi v. Motilal Daga, ILR (1938) Mad. 326.

18. In view of the settled position, though the other Courts have taken contra view, now we have to proceed on the basis that the decree passed on the file of the Original Side of this Court can be executed in this Court simultaneously, though the copy of the decree has been transferred to the other Court for execution. So, the remaining question is whether the decree-holder has to obtain permission from the Court that passed the decree to sustain such simultaneous execution petition.

19. Section 39 of the Code of Civil Procedure deals with the conditions under which a decree passed may be sent to another Court for execution. It may be sent for execution to another Court if immovable property to be sold or delivered situates outside the limit of jurisdiction of the Court which passes the decree and presumably within the limits of jurisdiction of the court to which it is sent for execution. It may also be sent to another Court if the judgment-debtor resides there or carries on business or works for gain within the limits of the jurisdiction of that Court. If the judgment-debtor has no property within the jurisdiction of the court which passes the decree, sufficient to satisfy the decree, and has property within the limits of the jurisdiction of the Court under which it is sent, the decree may be sent to that Court for execution. If the Court which passes the decree considers for reasons which shall be recorded in writing that the decree should be executed by another Court, then also, the decree may be sent to another Court for execution. But, there is no specific prohibition under Sec.39 to the Court which passed the decree to carry on execution

proceedings simultaneously, after the decree has been transferred to another Court for execution.

20. As contemplated under Sec.39 of the Code, if there is sufficient property by a sale of which the debt may be realised, ordinarily, no Court would be justified in sending the decree to another Court for execution. If for instance, the property within the jurisdiction of the court which passes a decree is comparatively not of much value and the property within the jurisdiction of the Court to which a decree is transferred is also not comparatively for such value, then there can be no injustice to the judgment-debtor carrying an execution proceedings in both the Courts. But, if the decree is sent for execution to two or more Courts to be executed at the same time and the amounts realised in the aggregate may be much higher than the judgment debt, it would manifestly bear injustice to the judgment-debtor to allow the execution proceedings to go at the same time. In the present case, in view of the order passed transferring the decree for execution to other Court at the instance of the appellant, it has to be taken that this Court on the Original Side satisfied while ordering transfer of a decree for execution to other court that the property of the judgment-debtor within the jurisdiction of the High Court (Original Side) is comparatively not of much value, to satisfy the decree. If it is so, if the appellant wants to file execution petitions simultaneously in the High Court (Original Side) to execute the same decree, before entertaining such execution petitions, the appellant has to satisfy the court two facts. One is that the property within the jurisdiction of the Court to which the decree is sent for execution is also not comparatively of much value and the second is that the earlier order of transfer was passed not on valid reasons, though the judgment-debtor is having sufficient property of much value to satisfy the decree within the jurisdiction of the High Court (Original Side). The said satisfaction can be arrived at only if the appellant files an application seeking permission to file execution petition before the Original Side of this court. Such application is necessary because if the decree is executed in two or more courts at the same time, there is a possibility of realising more amounts from the judgmentdebtor, then it is against the interest of the judgment-debtor. Moreover, if the full amount of decree is realised by two or three courts, it is difficult to see how matters can be worked out, which of the sale has to be held valid and on what ground and what interest would be acquired by the purchaser on those sales.

21. The above view is supported by the decision of the Division Bench of this Court in the decision in Maharaja of Bobbili v. Sree Raja Narasaraju Peda Baliar Simhulu Bahadur, (1914) ILR 37 Mad 231, in which it is held that when concurrent execution is necessary, the court which passed the decree may order it, as such court retains control over the execution proceedings. But till such order is passed and permission is given to the decree-holder to execute the decree simultaneously in more than one court, he is entitled to carry on execution proceedings at the same time. The said Division Bench has also relied on the decision of the Privy Council reported in Saroda Prosaud Mullick v. Luchmeeput Sing Doogur, (1872) 14 MIA 529 which dealt with the scope of Code of Civil Procedure of 1859.

22. The learned Judge of this Court in the decision in Venkatarami Reddi v. Rami Reddi, 1950(1) MLJ 787, found that an application for simultaneous execution has to be filed only in the court which passed the decree for the purpose of proceeding simultaneous execution.

23. The Learned Judge also relied on the decision reported in AIR 19 70 SC 1525 (Prem Lata v. Lakshman Prasad) in which it is held as follows:-

"Simultaneous execution proceeding in more places than one is possible, but the power is used sparingly in exceptional cases by imposing proper terms so that hardship does not occur to judgment-debtors by allowing several attachments to be proceeded with at the same time."

24. The judgments cited by the Learned Counsel for the appellant are not helpful to decide the issue regarding the necessity to obtain prior permission. Moreover with respect to the the said judgments of other High Courts, we need not rely on the same as the judgment of the Division bench of this Court cited above is available on the point.

25. From the above, it is clear that decrees may be executed simultaneously in more than one court but there should be an order permitting such execution, considering the necessity for permission for concurrent execution, before such execution proceedings can be carried out.

26. In view of the above reasonings, we are of the considered view that the common order dated 3.12.1990 of the learned single Judge does not require any interference and so the above Appeals are dismissed. No costs. Connected pending Civil Miscellaneous Petitions are also dismissed.

Index:yes
Internet:yes

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